

DAVID L. ANDERSON (CABN 149604)
United States Attorney
SARA WINSLOW (DCBN 457643)
Chief, Civil Division
GIOCONDA R. MOLINARI (CABN 177726)
Assistant United States Attorney
E-mail:gioconda.molinari@usdoj.gov

450 Golden Gate Avenue, Box 36055
San Francisco, California 94102
Telephone: (415) 436-7220
Facsimile: (415) 436-6748

Attorneys for the Defendant

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
OAKLAND DIVISION

THE CENTER FOR INVESTIGATIVE REPORTING AND PATRICK MICHELS.

Plaintiffs,

U.S. DEPARTMENT OF HOMELAND SECURITY

Defendant

Case No. 4:18-CV-02711 DMR

**STIPULATION RE: BRIEFING
SCHEDULE FOR MOTIONS FOR
SUMMARY JUDGMENT – CIV. L.R. 7-12
[PROPOSED] ORDER**

Whereas, in the Joint Status Report the parties filed on July 24, 2019, the parties stated that they would provide the Court a mutually agreeable briefing schedule for filing cross motions for summary judgment. The motions will be filed to resolve the legal issue regarding documents of a third-party consultant that Defendant asserts are exempted from disclosure by Exemption (b)(5) of the Freedom of Information Act (“FOIA”), 5 U.S.C § 552(a)(4)(B). In *Rojas v. FAA*, 927 F.3d 1046 (9th Cir. 2019), the Ninth Circuit recently held that Exemption (b)(5) applies to only records that the government creates and retains without employing a third-party consultant. The government is evaluating whether to seek rehearing of the panel majority’s opinion in *Rojas*. The deadline for the Solicitor General to file a

1 petition for panel rehearing or rehearing *en banc* is Friday August 2, 2019. Because the Exemption
2 (b)(5) issues Plaintiffs challenge are impacted by the *Rojas* opinion, if the Solicitor General files a
3 petition for rehearing, Defendant will request that the Court put in abeyance the briefing schedule stated
4 below, until the Ninth Circuit has issued a decision on the government's petition for rehearing.
5 Plaintiff's position is that it will likely oppose that motion as *Rojas* is not the only case it relies on and
6 the rule of judicial finality requires this case continue until actual changes are made to the law.

7 The parties' stipulate as follows:

8 On October 7, 2019, Defendant will file its motion for summary judgment. On November 8,
9 2019, Plaintiffs will file their cross-motion for summary judgment and opposition to defendant's motion.
10 On November 27, 2019, Defendant will file its reply and opposition brief to plaintiffs' cross motion for
11 summary judgment. On December 18, 2019, Plaintiffs will file their reply brief.

12 Respectfully submitted,

13 DAVID L. ANDERSON
United States Attorney

14 Dated: July 31, 2019

15 By: _____ /s/
GIOCONDA R. MOLINARI
16 Assistant United States Attorney

17 D. VICTORIA BARANETSKY
18 The Center for Investigative Reporting

19 Dated: July 31, 2019

20 By: _____ /s/*
D. VICTORIA BARANETSKY
21 The Center for Investigative Reporting
Attorney for Plaintiffs

22 *In compliance with Civil Local Rule 5-1(i), the filer of this document attests that all signatories listed
23 have concurred in the filing of this document.

24 [PROPOSED] ORDER

25 PURSUANT TO STIPULATION, IT IS SO ORDERED

26 DATED: _____

27 HON. DONNA M. RYU
United States Magistrate Judge